

### Remarks

By this amendment, independent claims 1, 24, 34, 57, 67-69 & 92 are amended to more particularly point out and distinctly claim the subject matter of the present invention. These amendments constitute a bona fide attempt by applicants to advance prosecution of this application, and are not intended as acquiescence to the substance of the rejections contained in the Office Action of November 12, 2003. Support for the amended claim language can be found throughout the application as filed; for example reference FIGs. 3 & 6A-7, as well as the supporting discussion thereof, including page 16, line 16 through page 22, line 14. No new matter is believed added to the application by any amendment presented. Claims 1, 3-5, 7-10, 12-34, 36-38, 40-43, 45-69, 71-73, 75-78, & 80-81 remain pending.

Initially, applicants thank the Examiner for the telephone conference afforded their undersigned representative on March 4, 2004 during which this application was discussed, and in particular, the 35 U.S.C. §101 rejection of claims 69-101. During the conference, the Examiner explained his reasoning for the 35 U.S.C. §101 rejection. No agreement was reached. The 35 U.S.C. §101 rejection is addressed at the end of the remarks.

In the Office Action, the claims were rejected under 35 U.S.C. § 103(a) as being unpatentable over Barnes et al. (U.S. Patent No. 5,970,475; hereinafter "Barnes") in view of Meltzer et al. (U.S. Patent No. 6,125,391; hereinafter "Meltzer"), and further in view of Fox et al. (U.S. Patent No. 6,561,581; hereinafter "Fox"). Applicants respectfully traverse this rejection to any extent deemed applicable to the claims presented herewith.

An "obviousness" determination requires an evaluation of whether the prior art taken as a whole would suggest the claimed invention taken as a whole to one of ordinary skill in the art. In evaluating claimed subject matter as a whole, the Federal Circuit has expressly mandated that functional claim language be considered in evaluating a claim relative to the prior art. Applicants respectfully submit that the application of these standards to the independent claims presented leads to the conclusion that the recited subject matter would not been obvious to one of ordinary skill in the art based on the applied patents.

Advantageously, applicants invention allows an automated trusted agent (performing one or more of the recited business functions of the independent claims) to add private relationships (and hierarchical authority) to a public business trading hub, thereby allowing for example, selected mission critical aspects of a fulfillment process (e.g., confidential preferential pricing terms) to be shielded from certain entities while allowing non-critical information in the exchange of commodities to freely flow between entities via a public business trading hub.

Applicants independent claims recite, in part, performing one or more business functions in private (i.e., the automated trusted agent managing in private at least one other business function (i) through (v)), and that the buyer (first) entity, seller (second) entity, and public business trading hub each being separate and independently owned. In addition, the automated trusted agent is electronically coupled to the public business trading hub, and is separate from the buyer entity, the seller entity and the public business trading hub. Thus, in applicants' invention, there are four separate participants in a public exchange of one or more commodities, wherein one or more aspects (i) - (v) thereof are managed in private. These business aspects or functions include (i) one or more pricing terms; (ii) one or more contract terms; (iii) one or more strategic relationships; (iv) one or more business processes associated with supply and demand of commodities; and (v) one or more product schedules, all associated with the public exchange of commodities between the buyer entity and seller entity using the public business trading hub. Applicants respectfully submit that the above-summarized features of the independently claimed invention would not have suggested or implied by Barnes, Meltzer and Fox, alone or in combination.

Barnes discloses an electronic procurement system that enables a purchasing organization to electronically transact for the purchase and supply of goods/services (see Abstract thereof). The electronic procurement system of Barnes enables corporate purchasers and suppliers to electronically transact for the purchase and supply of goods/services.

Initially, applicants note that the electronic procurement system in Barnes does not comprise a public business trading hub as the term is described in the present application and

understood in the art. The electronic procurement system in Barnes is a captive system to a corporation, and is not a separate independently owned trading hub as recited in the independent claims presented. In applicants' environment, the buyer entity, the seller entity and the public business trading hub are each separate and independently owned participants in the public commodity exchange transaction. Barnes does not describe such an environment.

Additionally, within such as environment, there is no teaching, suggestion or implication in Barnes of a fourth participant referred to in applicants independent claims as an automated trusted agent which performs one or more of the specific business functions recited therein in private, notwithstanding the public nature of the exchange of commodities via the public business trading hub. Applicants note that the certificate authority described in Barnes does not comprise an automated trusted agent separate from the buyer entity, seller entity and public business trading hub as recited in the independent claims presented. Further, there is no suggestion or implication in Barnes of an automated trusted agent which performs certain one or more of the specified selected business functions in private during the public exchange of commodities using the public business trading hub. The certificate of authority in Barnes administers a security feature which authenticates buyers and suppliers, but which does not provide one or more of aspects (i) – (v) associated with the public exchange of commodities as recited in the independent claims presented.

The Office Action expressly recognizes that Barnes does not teach a bid network for commodities and a trading architecture such as recited by applicants. To address this, Meltzer is combined with Barnes.

Meltzer describes an infrastructure for connecting businesses with customers, suppliers and trading partners. Under this infrastructure, companies exchange information using predefined machine-readable documents based on, for example, XML (eXtensible Markup Language) and described by Business Interface Definitions (BIDs) (see column 2, lines 32-54). Applicants respectfully submit that a careful read of Meltzer fails to uncover any suggestion or implication of a technique for addressing a privacy concern with the public exchange of one or more commodities using a public business trading hub.

Specifically, a careful reading of Meltzer fails to uncover or suggest any implication of an automated trusted agent, which is separate from a buyer entity, a seller entity, and a public business trading hub, let alone such an agent by which one or more business functions associated with the public exchange are performed in private (i.e., the business function set forth as (i) – (v).

Based on the foregoing, applicants respectfully submit that Meltzer, like Barnes, fails to teach or suggest applicants recited environment, as well as the performing of the specific business functions identified by an automated trusted agent. Further, applicants respectfully submit that Fox does not overcome the above-noted deficiencies of Barnes and Meltzer, as applied to the independent claims presented.

Fox describes an electronic commerce system which facilitates secure electronic commerce transactions. The disclosure of Fox is directed to digital certificates and the encryption of documents which ensures that only the intended recipient can decrypt them.

Applicants respectfully submit that a careful reading of Fox fails to uncover any teaching, suggestion or implication of an automated trusted agent which facilitates the public exchange of commodities within a business public trading hub such as recited by applicants. Further, a careful reading of Fox fails to uncover any suggestion or implication of the particular business functions managed in private by the automated trusted agent in applicants' invention. Specifically, applicants' automated trusted agent manages in private at least of one of: (i) one or more pricing terms; (ii) one or more contract terms; (iii) one or more strategic relationships; (iv) one or more business processes associated with supply and demand of commodities; and (v) one or more product schedules, all associated with the public exchange of one or more commodities between a buying entity and a selling entity using the public business trading hub. The digital certificates and the use thereof in Fox would not have suggested to one of ordinary skill in the art managing in private the particular business functions recited by applicants in the independent claims in association with a public exchange of commodities through a public business trading hub.

For the above reasons, applicants respectfully submit that independent claims 1, 24, 34, 57, 67-69 & 92 are patentable over the combination cited in the Office Action. The dependent claims are believed allowable for the same reasons as the independent claims, as well as for their own additional characterizations.

Finally, the Office Action states a 35 U.S.C. 101 rejection of claims 69-101 for "failing to define a functionality comprising a concrete and tangible result." This rejection is respectfully, but most strenuously traversed. The United States Court of Appeals for the Federal Circuit (CAFC) has stated that computer software programs, and in particular, methods of doing business implemented as computer software programs are patentable subject matter under United States patent law. See *State Street Bank & Trust Co. v. Signature Financial Group, Inc.*, 1492 F. 3d 1368 (July, 1998). In *State Street*, the Federal Circuit held that the question of whether or not claims constitute statutory subject matter should focus on the practical utility of the claimed invention, and thus, confirmed that "anything under the sun made by man" is patentable.

Initially, applicants note that the independent claims presented herewith recite a mechanism for facilitating the exchange of commodities. This mechanism is recited in method form, system form and computer program form. Only the computer program formatted claims 69-101 stand rejected under 35 U.S.C. §101. Applicants respectfully submit that these computer program claims implement the particular functionality recited in the method formatted claims and the system formatted claims, which are not objected to under 35 U.S.C. §101. In all formats, the functionality of applicants' invention is consistently recited in the claims presented, and therefore, applicants respectfully request withdrawal of the §101 rejection.

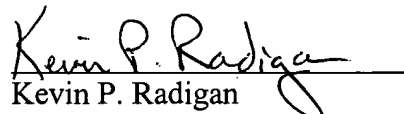
Moreover, both independent claims 69 & 92 recite at least one program storage device readable by a machine, tangibly embodying at least one program of instructions executable by the machine to perform a method of facilitating the exchange of commodities. Claim 69 expressly recites utilizing a public business trading hub in the exchange of one or more commodities. Thus, this claim clearly recites a concrete and tangible result, i.e., the exchange of the one or more commodities. In accordance with claim 69, the method includes performing one or more selected business functions that include managing one or more pricing terms associated

with the exchange. Again, this management of pricing terms is a concrete and tangible result. Claim 92 recites a method of facilitating the exchange of commodities, which includes requesting by a first entity the obtaining of one or more commodities of a product, wherein the one or more commodities are obtained from one or more second entities via a public business trading hub. The method further includes using an automated trusted agent to interface between the first entity and the second entities, wherein one or more aspects associated with obtaining the one or more commodities are controlled by the automated trusted agent. This claim thus recites a result in that the one or more aspects associated with obtaining the one or more commodities are controlled by the automated trusted agent.

Based on the foregoing, applicants respectfully request reconsideration and withdrawal of the 35 U.S.C. 101 rejection of claims 69 & 92, and their respective dependent claims 70-91 & 93-101.

Should the Examiner wish to discuss this case with applicants' attorney, the Examiner is invited to contact applicants' representative at the below-listed number.

Respectfully submitted,

  
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